

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

**Sierra Club, Natural Resources Council
of Maine, and Appalachian Mountain
Club,**

Plaintiffs,

v.

**U.S. Army Corps of Engineers; U.S.
Department of Energy, and Col. John A.
Atilano II, in his official capacity as
District Commander and District Engineer,**

Federal Defendants,
and

**Central Maine Power Company and
NECEC Transmission, LLC,**

Intervenor Defendants.

Case No. 2:20-cv-00396-LEW

JOINT STATUS REPORT

Following the Court’s direction during the January 6, 2022 status conference, Plaintiffs Sierra Club, Natural Resources Council of Maine, and the Appalachian Mountain Club, Federal Defendants United States Army Corps of Engineers (“Corps”), Colonel John A. Atilano II, and the United States Department of Energy (“DOE”), and Intervenor Defendants Central Maine Power Company and NECEC Transmission LLC (hereinafter collectively “the Parties”) have conferred and hereby submit this Joint Status Report for the Court’s consideration.

Status of Administrative Record Conferrals

The Parties have been conferring over approximately the past year regarding Federal Defendants’ administrative records, and these conferrals have continued since the Court’s last

hearing in this case on January 6, 2022. While Plaintiffs and Federal Defendants have been able to resolve some disputes regarding the Corps' and DOE's administrative records, there are several issues that remain unresolved, including:

1. Whether documents that Federal Defendants claim are "deliberative" are part of the administrative record and/or whether these documents need to be identified on a privilege log.
2. Whether certain documents that Federal Defendants are claiming are "deliberative" are, in fact, "deliberative."
3. Whether the Corps' and DOE's administrative records must include documents from the Maine Department of Environmental Protection's (DEP) proceedings on CMP's state permit applications.
4. Whether the Court should order that the Corps' and DOE's records be supplemented with certain documents and/or consider the documents as extra-record evidence.

This is not an exhaustive list of unresolved issues, and Plaintiffs reserve the right to raise additional issues related to Federal Defendants' administrative records in their motion, while Federal Defendants reserve the right to raise any relevant defenses to such challenges.

Given the nature of these disputes, Plaintiffs and Federal Defendants agree that motions practice will be necessary on the Federal Defendants' administrative records. Intervenor Defendants do not have any outstanding disputes with Federal Defendants regarding the administrative records, and do not anticipate filing any record-related motions.

Status of State Court Proceedings

The appeal in *NECEC Transmission LLC et al. v. Bureau of Parks and Lands et al.*, No. BCD-CIV-2021-00058 (the challenge to the initiative) is currently being briefed. Appellants filed their briefs on February 16, 2022. Briefs of appellees and amicus curiae are due March 30, 2022. Appellants' reply briefs and responses to amici are due April 20, 2022. Oral argument will be held on either May 9 or 10, 2022. The time and date will be finalized about a month before the argument.

Briefing in *Black v. Cutko*, No. BCD-cv-2020-29 (the challenge to the Maine Bureau of Parks and Land (“BPL”) lease) is completed. Oral argument will be held the same day as oral argument in *NECEC LLC v. BPL*.

Scheduling Proposal

Plaintiffs maintain their position that, given that this case might be significantly affected by the outcome of the state court proceedings and to conserve the Parties’ and the Court’s resources, the Court should stay or otherwise not enter any briefing schedules in this case until those proceedings are resolved. Federal Defendants continue to take no position on the issue of whether a stay is appropriate. Intervenor Defendants maintain their position that, given the substantial length of time that it has taken to prepare the administrative records in this case and the need to resolve this case within a reasonable timeframe in the event that the ongoing state court appeals are resolved in their favor, the Court should (1) set a schedule for motions practice on the contents of the agency record, but (2) not set any schedule for briefing on the merits until after the state court appeals have been resolved.

If the Court is inclined to move ahead with resolving the administrative record disputes while the state court proceedings are pending, the Parties have conferred and agreed on the below schedule and extended page limits for the briefs:

Event	Date	Page Limits
Deadline for the Department of Energy to provide an updated certified record to the Plaintiffs and Intervenor-Defendants.	March 31, 2022	
Deadline for Plaintiffs to file a motion challenging the contents of the Corps’ and/or DOE’s respective administrative records and/or seeking to admit extra-record evidence.	April 8, 2022	15 pages

Deadline for Federal Defendants and Intervenor Defendants to respond to any motion challenging the contents of the Corps' and/or DOE's respective administrative records and/or seeking to admit extra-record evidence.	30 days after the filing of Plaintiffs' motion	15 pages
Deadline for Plaintiffs to reply.	18 days after the filing of Federal Defendants' response	11 pages, or 15 pages for a combined reply brief if both Federal Defendants and Intervenor Defendants file response briefs
Deadline for Parties to file Joint Status Report and/or Schedule addressing future course of case.	14 days after the final decision on Plaintiffs' motion	n/a

Further, the Parties agree that they will notify the Court if a decision on the merits is made in either of the state court proceedings while any administrative record motions are pending before this Court.

Respectfully submitted this 4th day of March, 2022.

s/ Catherine B. Johnson
 Catherine Barton Johnson
 P.O. Box 551
 Alna, ME 04535
 (207) 586-5706
 cjohnson@tidewater.net

s/ Lia Comerford
 Lia Comerford
 (pro hac vice)
 Earthrise Law Center
 10101 S. Terwilliger Blvd.
 Portland, OR 97236
 (503) 768-6823
 comerfordl@lclark.edu

Kevin Cassidy
 (pro hac vice)

Earthrise Law Center
P.O. Box 445
Norwell, MA 02061
(781) 659-1696
cassidy@lclark.edu

Counsel for Plaintiffs

/s/ Amanda M. Stoner
AMANDA M. STONER
MD Bar No. 2012180040
United States Department of Justice
Environment & Natural Resources Division
Natural Resources Section
P.O. Box 7611
Washington, DC 20044
T: (202) 598-0881
F: (202) 305-0275
Amanda.Stoner@usdoj.gov

/s/ Mark J. Widerschein
MARK J. WIDERSCHEIN
Ohio Bar No. 100162
United States Department of Justice
Environment & Natural Resources Division
Natural Resources Section
P.O. Box 7611
Washington, DC 20044
T: (202) 532-5803
Mark.widerschein@usdoj.gov

/s/ Alexandra L. St. Romain
ALEXANDRA L. ST. ROMAIN
N.J. Bar No. 305762019
United States Department of Justice
Environment & Natural Resources Division
Environmental Defense Section
P.O. Box 7611
Washington, DC 20044
T: 202-532-3284
Alexandra.St.Romain@usdoj.gov

Counsel for Federal Defendants

/s/ Joshua D. Dunlap
Matthew D. Manahan

Joshua D. Dunlap
Lisa A. Gilbreath
PIERCE ATWOOD LLP
254 Commercial Street
Portland, ME 04101
207-791-1100
mmanahan@pierceatwood.com
jdunlap@pierceatwood.com
lgilbreath@pierceatwood.com

*Attorneys for Central Maine Power Co. and
NECEC Transmission LLC*

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of March, 2022, a copy of the foregoing Joint Status Report was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

s/ Lia Comerford
Lia Comerford
(*pro hac vice*)
Earthrise Law Center
10101 S. Terwilliger Blvd.
Portland, OR 97236
(503) 768-6823
comerfordl@lclark.edu